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right to an army, a fleet or the power to declare war. Our states are all sovereignties; but they have wisely foregone these rights and powers. What a mess this Continent would be in, if our 48 states each had an army, a fleet and could declare war. How much safer they are without these powers and rights. Several native states in India enjoy sovereignty, but they can not declare war. So with a number of "independent" states, each a sovereignty, but powerless and protected.

Why not recognize as law and a basis for international action, what is already an accomplished fact? What a farce "war" is for Cuba, Hayti, Santo Domingo and the Central American States. Mexico can not defend itself,

as was shown by the success of French occupation in 1861 until the United States acted. By our might, Latin America has its "independence." Each of these countries from Salvador up, would be better off without armies, fleets or the power to declare war.

If small lands, races or peoples, wish to share in these perilous burdens and their inevitable responsibilities, let them merge themselves in a great power. If they prefer identity and sovereignty, let them have that and leave war to their biggers.

But let us have no more of this Misleading Myth of the Equality of Nations, which sows the seeds of war, but can not reap the fruits of victory.

This reality is a solution even for the Irish problem.

The United States and International Government

By WILLIAM I. HULL, PH.D.

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IN beginning this discussion I want frankly to confess that to my mind the League of Nations which has been proposed to America is a dangerous proposition. It seems to me to be wholly un-American. It is claimed that it is a step in the development of international relations; to my mind it is a step backward, a step in the wrong, the un-American, direction. We have been told that it is a half loaf of bread, which is better than no bread at all; but to my mind it is a half loaf of bread which contains fatal poison. Hence, I would like to present what seems to me an American experiment in internationalism, and to contrast it with this old world, European, retroactive experiment in which our Republic of the new world is so pressingly invited to participate.

THE AMERICAN EXPERIMENT

The American experiment in internationalism began in Philadelphia in 1787. It was attempted on a world stage in 1899 and 1907 at the Hague, and there are thousands, perhaps millions, of Americans who devoutly hope that President Harding's administration will take up again that American experiment for the world and press it through to a successful conclusion.

I need scarcely say that in opposing the League of Nations I am not a "bitter ender." I need scarcely say that the super-nationalism, the ultra-nationalism of some of the American opponents of the League of Nations makes no appeal whatsoever to me. I believe implicitly in the philosophy of *noblesse oblige*. I believe that, be-

cause much has been given to this Republic, much is rightfully expected of it; and furthermore, I believe that America is going to rise to the vision of its duty, its responsibility and its opportunity, and that it is going to do its utmost to lead the world in the right international direction.

The aid or leadership of the United States in developing international government can be given, however, only on the basis of two fundamental American principles: First, that neither military nor economic coercion shall be applied to recalcitrant or reluctant states either to bring them before the international court or to enforce the decisions of that court; and, second, that judicial settlement must be preceded or accompanied by a reduction of national armaments to a minimum consistent with strictly national needs, and a prohibition of their use for international purposes. The rejection of military and economic coercion as applied to the states of the Union by any department of the national government, and our agreement with Great Britain for mutual disarmament on the Canadian frontier, are two facts among many which illustrate this twofold principle of our American democracy.

THE TRUE LEAGUE OF NATIONS

The League of Nations, as has been shown, proposes an Assembly, a Court and a Council. It provides, that is to say, for a legislative, a judicial, and an executive department of government. I will not dwell upon the legislative aspect. It is essential that a third Hague Conference shall be called together in order that the successive steps in the development of our international experiment may be taken; and in that third Hague Conference all the nations of the world, great and small, will meet together, on a plane of equal-

ity, to negotiate in regard to the successive steps to be taken. Three men will not get together in a room with closed doors and agree upon the plan and then attempt to dictate that plan to all the other forty-five or fifty members of the family of nations. The nations will do as we did in Independence Hall, when the little states came together with the great states and threshed out their differences and came to a mutual agreement.

In the second place, it was the first Hague Conference which created an International Court. The President of our own Republic opened the doors of that Court and sent to it its first case. Before the great war, within twelve years after its doors were opened, fifteen disputes among the nations were settled. It is true that the Court was not a genuine Court, in that it had no permanency, in that its membership was too large for a genuine court. But the second Hague Conference in creating the International Court of Prize did solve, temporarily at least, the problem which the Conference had grappled with in vain concerning the constitution of the Court of Arbitral Justice. Mr. Root's commission at the Hague last summer has suggested another plan for the solution of that difficult problem. It is a plan which seems to be dependent upon the League of Nations, but it is not necessarily so. There are other means of solving that great judicial problem. One thing which the League of Nations has done to the Court proposed by the Root Commission last summer, and which I devoutly hope the Conferences at the Hague in the future will undo, is in regard to the so-called compulsory jurisdiction of the Court, that is to say, the giving to either party to the dispute the right to bring the case before the Court.

That was the great, fundamental step which was taken by the Root Commission last summer and which has been eliminated by the League of Nations or the Supreme Council from the International Court. We must get back to that. It is entirely in accord with our American principle and precedent. Before the Supreme Court of the United States either party to the dispute may come with its case. The Court summons the defendant state to appear, and the defendant state may come or not as it pleases. The Court does not attempt to compel its attendance. It proceeds with the consideration of the dispute *ex parte* and hands down its decision. More than seventy disputes between the states of this Republic have been settled by the Supreme Court of the United States.

Third, we come to the executive part of the international government, the Council of the League of Nations and the Secretariat. We have heard a great deal in recent years about the necessity of putting teeth into our international arrangement, and so the Paris Conference attempted to put teeth into the Covenant of the League of Nations. The "nefarious" Article X is admittedly the heart of the League of Nations. The distinguished author of the Covenant himself says so. It is a steel heart. It provides for the coercion of the members of the League, first by economic stress, and, if that is not sufficient, by military coercion.

A LEAGUE OF NATIONS WITHOUT COERCION

Just here we Americans differ fundamentally from the European ideal of the League of Nations. In Philadelphia in 1787 there were men like Randolph of Virginia and Patterson of New Jersey who said, "This Constitution will be but a scrap of paper; this

new Union which we are forming will die still-born unless we put into it military force. We must give to the national government military power to coerce the States of this new Republic." Madison and Hamilton and Ellsworth argued long and convincingly against the wisdom and the righteousness of putting into our Constitution that heart of steel. Consider what it means to apply economic blockade to an entire community of men, women and children; we know the millions who have died abroad because of the application of economic blockade in recent years. Consider what it means to apply military coercion to entire communities; consider what it would mean to the United States to have lined up against it the naval and military forces of Great Britain and Japan and France and all the other members of the League of Nations. I think that in discussing this Article X we have unconsciously, perhaps, taken the attitude that this heart of steel will beat only against the little fellows. It is an easy thing for us to think of applying military and economic coercion to such members of the family of nations as Turkey or Poland; but it is a poor rule that does not work both ways.

The founders of our Republic rejected as futile and unrighteous the application of military force for the coercion of the states. And yet with what extraordinary success this government has been carried on for more than a century and a quarter! Evidently, there were then and are now forces in civilized society, other than the military and economic force, which can be depended upon. I once enumerated these forces and found that there are at least seven which have been successfully relied upon by this American Republic and could be as successfully relied upon by the family of nations.

Some think that we might go into the League of Nations through the door of the Versailles Treaty and the Covenant included in it. I counted up once the specific tasks imposed upon the League of Nations and its various Commissions by the Versailles Treaty, and if my memory does not fail me it was just about fifty-seven. I venture to prophesy that if the Administration and the Senate attempt to modify the Covenant and the Versailles Treaty as a whole in such a way that they would be acceptable to this American people, it would resemble that surgical or veterinary operation—I am not quite sure of the adjective—which is described as cutting off the tail of the dog just behind its ears. I see no possibility of entering into internationalism through such a door as that.

THE NEW EUROPEAN CONCERT OF NATIONS

It would be exceedingly easy to point out the picturesque and the cosmopolitan aspects of the two Hague Conferences. There were men in those Conferences who were fully equal to Sir Eric Drummond or Lord Robert Cecil, or others of the fine men who are participating in the League of Nations. But all that is beside the mark. It is the fundamental question in which we Americans are interested. Are we going to join in the *Concert of Europe*—for it is just that? In the ultimate analysis, it is not a League of Nations; it is a little group of the strongest powers of the old world in whose hands are the fruits of victory and in whose hands the chief military and naval forces of this world are held. It is a concert of military power.

Back of the Assembly at Geneva, was the Council of the League of Nations, and we know the differences which arose between those bodies. We know, for example, how the Council

refused to permit the Assembly to have anything to do with that fundamentally important problem of the mandatories. There was a Commission to study them; but Balfour frankly said that if the Assembly attempted to reverse the decisions already made concerning the mandates, Great Britain would withdraw from the Assembly.

I believe, then, that overshadowing the Assembly is the Council of the League; but worse than that, overshadowing the Council of the League is the Supreme Council, so-called, the representatives of the executive departments of the British and French and Italian Governments. That is the European method of maintaining peace or trying to do so. It is what has been done since 1648. It is not our American method. It was the method which the Germans practically adopted when they formed their Empire in 1871; they recognized the fact that Prussia possessed two-thirds of the population and two-thirds of the power, and, in accordance with that fact, they permitted the German Empire to be dominated by Prussia. We recognized in 1787 the fact that Virginia and Pennsylvania and Massachusetts possessed the largest population and the greatest power, but we did not permit that fact to vitiate our American doctrine that there must be the equality of states before the law and in the Constitution. We did not permit it to vitiate our American doctrine that there are other forces, higher and more efficient than military and economic coercion, which can be relied upon for the achievement of law and order and justice among states and nations.

Now this is a most inadequate statement of some of the fundamental objections which Americans have to the old world experiment which is offered to us today. But in entirely rejecting this retroactive, this dangerous, this

vicious experiment, we should certainly forfeit the respect of humanity if we should fail to act upon what is so clearly our duty and our responsibility,

to see to it that the world is led further along that great experiment which was begun in the City of Philadelphia.

Limitations on the Functions of International Courts

By EDWIN M. BORCHARD, PH.D.

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MUCH of the discussion on the desirability and feasibility of an international court has been based upon the premise that a court would furnish a substitute for war, that nations wanted a court for the settlement of their disputes, and that the actual establishment of a court would persuade nations to submit their differences for adjudication. The topic, of "Functions of International Courts and Means of Enforcing their Decisions," might indicate a belief that the debatable or open questions concern the functions of a court already created and the means necessary to carry its awards into execution. It will be my necessary, but ungrateful, duty to dispel the illusions and the misconceptions of fact involved in the assumptions of the major premise above mentioned.

No one would discourage the judicial settlement of disputes, and the desirability of such adjustment has been generally admitted by thinking men. The devoted efforts of certain societies and organizations for the establishment of an international court, the promise of certain statesmen to build a new world order upon the basis of such a court, and a widespread sentimental faith in the efficacy of the judicial process in settling the issues that arise among organized groups have served, I believe, to arouse expectations that can not be met and to confuse rather than enlighten the public mind. Inasmuch as progress can rarely begin from misunder-

standing, it has seemed to me more useful to examine the manifest limitations upon the functions of an international court, than to extol the virtues of a court still to be created; my belief being that knowledge of the facts as they are, at least as my study discloses them, will prove of greater practical utility than an indulgence in the ideology of facts as they ought to be.

The belief that a judicial court would furnish a substitute for war has been one of the most common of the assumptions prevailing among important groups in many countries. The example is cited of the readiness and effectiveness with which our Supreme Court decides issues between states of the union, and the conclusion is drawn that obviously the same method could be adopted among the nations. Nothing could, in my opinion, be more erroneous. The existing order of international life, at least among the larger powers, is conditioned upon a continual struggle for economic advantage, in the preservation of home markets by tariffs and discriminations against more favored competitors; in the endeavor to capture foreign markets against the competition of commercial rivals; in the assurance of a steady and cheap supply of raw materials on the part of manufacturing nations, leading to competing efforts to control backward areas, colonies, protectorates, mandatories and other fields of investment, and to acquire the incidental machinery